

立法會
Legislative Council

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the Administration)

**Bills Committee on
National Security (Legislative Provisions) Bill**

**Minutes of meeting
held on Tuesday, 15 April 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon IP Kwok-him, JP (Chairman)
Hon Ambrose LAU Hon-chuen, GBS, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Eric LI Ka-cheung, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon LAU Kong-wah

Hon LAU Wong-fat, GBS, JP
Hon Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Dr Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS, JP
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi
Hon LAU Ping-cheung
Hon MA Fung-kwok, JP

**Members
absent** : Hon Fred LI Wah-ming, JP
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon Andrew WONG Wang-fat, JP
Hon LAU Chin-shek, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP

**Public Officers :
attending** Mrs Regina IP, GBS, JP
Secretary for Security

Mr Timothy TONG, JP
Permanent Secretary for Security (Acting)

Mr Bob ALLCOCK, BBS, JP
Solicitor General

Mr Gilbert MO
Deputy Law Draftsman

Ms Winnie NG
Administrative Assistant to Secretary for Security

Mr Johann WONG
Principal Assistant Secretary for Security

Miss Adeline WAN
Senior Government Counsel

Mr Hubert LAW
Assistant Secretary for Security

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Jimmy MA, JP
Legal Adviser

Ms Bernice WONG
Assistant Legal Adviser 1

Mr Raymond LAM
Senior Assistant Secretary (2)5

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to provide a written response to the following issues raised and information sought by members in respect of subversion -

- (a) in relation to the basic system of the People's Republic of China (PRC) as established by the Constitution of PRC -
 - (i) information on the specific views of experts that it was the basic system as explained in Articles 1 and 2 of the Constitution of PRC and the names of such experts;
 - (ii) whether such experts considered that Articles 5, 6, 7, 11, 12 and 15 were also of use in the interpretation of the sentence "The socialist system is the basic system of the People's Republic of China.";
 - (iii) whether the expression "socialist system" covered economic, political and legal systems;

- (iv) whether the basic system of the PRC was only referred to in Article 1 of the Constitution of PRC;
- (v) why it was necessary to protect the basic system of PRC;
- (b) explaining the meaning and scope of the term "disestablishes" and providing the relevant case law, if available;
- (c) explaining the types of acts that would constitute disestablishing the basic system;
- (d) considering the suggestion that the term "disestablishes" in the proposed section 2A(1)(a) of the Crimes Ordinance (CO) be replaced by "overthrows";
- (e) considering the suggestion that the element of "imminence" be added in the expression "seriously endangers the stability of the People's Republic of China" in the proposed section 2A(1) of CO;
- (f) whether the stability of Hong Kong or Taiwan was part of "the stability of the People's Republic of China" in the proposed section 2A(1) of CO and, if so, the extent of instability of Hong Kong or Taiwan that would affect the stability of PRC;
- (g) explaining the mental element required for the offence of subversion, and for attempt and conspiracy to commit subversion;
- (h) providing the relevant case law in other jurisdictions relating to offences similar to the subversion offence proposed in the Bill, if available;
- (i) whether the invasion of PRC by foreign armed forces should be excluded from provisions relating to subversion;
- (j) whether an invading enemy could be prosecuted for subversion under Mainland laws;
- (k) whether the following acts in support of movements in the Mainland like the one in Beijing in June 1989 would amount to subversion -
 - (i) taking part in a demonstration in Hong Kong in support of the Mainland movement if the local demonstration brought traffic to a halt;

- (ii) taking part in the demonstration in the Mainland;
- (iii) providing financial support to the Mainland movement; and
- (l) whether the proposals in the proposed section 2A(1)(a) and (c) of CO were beyond the requirement imposed by Article 23 of the Basic Law regarding subversion.

3. The Bills Committee agreed that a verbatim record on the discussions relating to the basic system of the PRC at the meeting on 8 April 2003 should be prepared.

II. Date of next meeting

4. The next meeting would be held on Tuesday, 22 April 2003 at 2:30 pm to continue discussion with the Administration.

III. Any other business

Additional meetings with the Administration to discuss the Bill

5. The Bills Committee discussed whether additional meetings with the Administration should be held every Saturday from 9:00 am to 12:30 pm from May 2003 onwards. As there were divided views among members, a vote was taken on the matter. Miss Margaret NG said that she would not take part in the voting as a protest. 18 members voted in favour of the Bills Committee holding additional meetings with the Administration every Saturday from 9:00 am to 12:30 pm starting from May 2003 while five members voted against.

Additional meeting to receive the views of the public on the Bill

6. The Bills Committee agreed that an additional meeting to receive the views of the public on the Bill would be held on 3 May 2003 from 9:00 am to 12:30 pm and the deadline for request to make oral representation to the Bills Committee would be 25 April 2003.

7. The meeting ended at 6:50 pm.

**Proceedings of the meeting of the Bills Committee on
National Security (Legislative Provisions) Bill
on Tuesday, 15 April 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000121	Chairman	Opening remarks	
000122 - 000211	Hon Margaret NG Chairman	Preparation of verbatim record of discussions relating to the basic system of the People's Republic of China (PRC)	
000212 - 000302	Hon CHEUNG Man-kwong Chairman Admin	Information on the specific views of experts that it was the basic system as explained in Articles 1 and 2 of the Constitution of PRC and the names of such experts	Admin to provide the relevant information
000303 - 000439	Hon SZETO Wah Admin	Whether the basic system of the PRC was only referred to in Article 1 of the Constitution of PRC	Admin to provide a response
000440 - 001127	Hon WONG Sing-chi Chairman Admin	Why it was necessary to protect the basic system of PRC	Admin to provide a response
001128 - 001725	Hon CHEUNG Man-kwong Admin Chairman	Meaning of “disestablishes” in the proposed section 2A(1)(a) of CO; whether disestablishing the basic system of the PRC should be an offence	
001726 - 004403	Hon Margaret NG Chairman Admin	Discussion of the Administration’s responses to issues raised by members and order of studying the Bill	
004404 - 005647	Hon Albert HO Admin	Whether there was difference between treason and subversion offences; whether experts considered that Articles 5, 6, 7, 11, 12 and 15 were also of use in the interpretation of the sentence “The socialist system is the basic system of the People's Republic of China.”; whether the expression “socialist system” covered economic, political and legal systems	Admin to provide a response on the expert view and to explain whether the expression "socialist system" covered economic, political and legal systems

005648 - 011556	Hon LEE Cheuk-yan Chairman Hon LAU Kong-wah Admin	Meaning of “disestablishes the basic system of the People’s Republic of China”; whether the term “disestablishes” in the proposed section 2A(1)(a) of CO should be amended to “overthrows”	Admin to provide a response on whether the term "disestablishes" in the proposed section 2A(1)(a) of CO should be deleted and substituted by "overthrows"
011557 - 011803	Hon HUI Cheung-ching Admin	Whether calling for political reform would be caught by the offence of subversion	
011804 - 013148	Hon Martin LEE Admin	Whether there was a need for the proposed sections 2(1)(b) and (c) as well as 2A(1)(a) and (c) of CO; requirement of mental element for the offence of subversion	
013149 - 014220	Hon Andrew CHENG Admin	Whether there was a need for the proposed section 2(1)(b) and (c) of CO; meaning of the expression “seriously endangers the stability of the People’s Republic of China” in the proposed section 2A(1) of CO	
014221 – 020003	Hon James TO Admin Chairman	Whether it was appropriate to make reference in the proposed section 2A(4)(a) of CO to the proposed section 2(4)(c); meaning of the expression “essential service” in the proposed section 2A(4)(b) of CO; whether there was a need for the proposed section 2A(1)(c) of CO; whether the expression “endangers the stability of the People’s Republic of China” in the proposed section 2A(1) of CO should be amended along the line of creating a crisis in the PRC; incorporating the element of "imminence" in the expression "seriously endangers the stability of the People's Republic of China" in the proposed section 2A(1) of CO; whether the stability of Hong Kong or Taiwan was part of "the stability of the People's Republic of China" in the proposed section 2A(1) of CO and, if so, the extent of instability of Hong Kong or Taiwan that would affect the stability of PRC	Admin to consider incorporating the element of "imminence" in the expression "seriously endangers the stability of the People's Republic of China" in the proposed section 2A(1) of CO and to provide a response regarding the stability of PRC
[Break]			

021226 - 022927	Hon Margaret NG Chairman Admin	Differences between the proposed subversion offences and treason offences; whether the invasion of PRC by foreign armed forces should be excluded from provisions relating to subversion; whether an invading enemy could be prosecuted for subversion under Mainland laws	Admin to provide a response on whether the invasion of PRC by foreign armed forces should be excluded from provisions relating to subversion; and whether an invading enemy could be prosecuted for subversion under Mainland laws
022928 - 023748	Hon CHEUNG Man- kwong Admin	Whether taking part in a demonstration in Hong Kong in support of a Mainland movement similar to the one in June 1989 would constitute subversion	
023749 - 023929	Hon TAM Yiu-chung Admin	Differences between the offences of treason and subversion	
023930 - 025415	Hon Albert HO Admin Chairman	Whether taking part in a demonstration or a strike in Hong Kong in support of a Mainland movement similar to the one in June 1989 would constitute subversion	
025416 - 025909	Hon LAU Kong-wah Hon SZETO Wah Chairman Admin	Whether acts resulting in social unrest in Hong Kong would constitute “seriously endangers the stability of the People’s Republic of China”	
025910 - 031025	Hon Margaret NG Chairman Admin	Mental element required for the offence of subversion, and for attempt and conspiracy to commit subversion; whether the following acts in support of movements in the Mainland like the one in Beijing in June 1989 would constitute subversion – (a) taking part in a demonstration in Hong Kong in support of the Mainland movement if the local demonstration brought traffic to a halt (b) taking part in the demonstration in the Mainland (c) providing financial support to the Mainland movement	Admin to provide a response
031026 - 032508	Hon CHEUNG Man- kwong Admin Chairman LA	Whether the proposals in the proposed section 2A(1)(a) and (c) of CO were beyond the requirement imposed by Article 23 of the Basic Law regarding subversion	Admin to provide a response

032509 - 032532	Hon LAU Kong-wah Chairman	Discussion of issues relating to secession	
032533 - 033248	Hon SZETO Wah Admin	Whether calling for a bank run of Mainland banks or calling for the purchase of firearms in support of a Mainland movement similar to the one in June 1989 would constitute subversion	
033249 - 033929	Hon Margaret NG Admin	Meaning and scope of the term "disestablishes" and the relevant case law; types of acts that would constitute disestablishing the basic system; relevant case law of other jurisdictions relating to offences similar to the subversion offences proposed in the Bill	Admin to provide a response
033930 - 034033	Hon LEE Cheuk-yan Chairman	Whether the expression of "serious criminal means" was found in the relevant legislation of other jurisdictions	
034034 - 034224	Hon CHEUNG Man-kwong Chairman Admin	Further questions relating to subversion	
034225 - 035210	Chairman Hon Margaret NG Hon CHEUNG Man-kwong Hon CHAN Kam-lam Hon Cyd HO Hon Emily LAU Hon LAU Kong-wah	Additional meetings on Saturdays with the Administration to discuss the Bill; voting on whether the Bills Committee should hold additional meetings with the Administration on every Saturday starting from May 2003	
035211 - 041920	Chairman Hon Margaret NG Hon LAU Kong-wah Hon Miriam LAU Hon Emily LAU Hon MA Fung-kwok Hon CHAN Kam-lam Hon LEE Cheuk-yan Hon NG Leung-sing Hon LEUNG Fu-wah Hon CHEUNG Man-kwong Hon Cyd HO Hon Howard YOUNG Hon CHOY So-yuk	Whether an additional meeting should be held to receive the views of the public on the Bill	